

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>The El Paso Telephone Company d/b/a</b>	:	
<b>FairPoint Communications / The El</b>	:	
<b>Paso Telephone Company and</b>	:	
<b>360networks (USA) inc.</b>	:	<b>10-0675</b>
	:	
<b>Joint Petition for Approval Negotiated</b>	:	
<b>Interconnection Agreement dated</b>	:	
<b>November 11, 2010, pursuant to 47</b>	:	
<b>U.S.C. § 252.</b>	:	

**ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

On November 24, 2010, pursuant to 83 Illinois Administrative Code Part 763, The El Paso Telephone Company d/b/a FairPoint Communications / The El Paso Telephone Company and 360networks (USA) inc. (*collectively* referred to as "Joint Petitioners") filed a Joint Petition for Approval of an Negotiated Interconnection Agreement dated November 11, 2010 under Section 252 of the Telecommunications Act of 1996 (47 U.S.C. §§ 151 et seq.) ("Act").

A verified statement in support of the petition was filed by Christopher S. Barron, Director, State Affairs for The El Paso Telephone Company d/b/a FairPoint Communications / The El Paso Telephone Company asserts that interconnection agreement was reached through voluntary negotiations between the parties.

Pursuant to notice as required by law and the rules and regulations of the Commission, this matter came on for hearing by a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois, on January 11, 2011. Staff filed the Verified Statement of A. Olusanjo Omoniyi of the Commission's Telecommunications Division.

At the hearing, appearances were entered by counsel on behalf of the Joint Petitioners and Staff of the Commission. All agreed that there were no unresolved issues in this proceeding.

Mr. Omoniyi's Verified Statement was admitted into evidence without objection and the record was marked "Heard and Taken."

## **II. SECTION 252 OF THE TELECOMMUNICATIONS ACT**

Section 252(a)(1) of the Act allows parties to enter into negotiated agreements regarding requests for interconnection services or network elements, as well as amendments to those agreements. Joint Petitioners have negotiated such an Agreement and submitted it for approval in this proceeding.

Section 252(e)(1) of the Act provides, in part, that “[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State Commission.” This Section further provides that a State Commission to which such an agreement is submitted “shall approve or reject the agreement, with written findings as to any deficiencies.” Section 252(e)(2) provides that the State Commission may only reject the negotiated agreement if it finds that “the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement” or that “the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.”

Section 252(e)(4) provides that the agreement shall be deemed approved if the State Commission fails to act within 90 days after submission by the parties. This provision further states that “[n]o State court shall have jurisdiction to review the action of a State Commission in approving or rejecting an agreement under this section.” Section 252(e)(5) provides for preemption by the Federal Communications Commission if a State Commission fails to carry out its responsibility, and Section 252(e)(6) provides that any party aggrieved by a State Commission’s determination on a negotiated agreement may bring an action in the appropriate Federal District Court.

Section 252(h) requires a State Commission to make a copy of each agreement approved under subsection (3) “available for public inspection and copying within 10 days after the agreement or statement is approved.” Section 252(i) requires a local exchange carrier to “make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”

## **III. THE AGREEMENT**

This is a negotiated interconnection Agreement between The El Paso Telephone Company d/b/a FairPoint Communications/The El Paso Telephone Company and 360networks (USA) inc. The Agreement is the result of voluntary negotiations between the parties and establishes various financial and operational terms for a variety of business relationships. The Agreement was reached on or about November 11, 2010. The Agreement expires two years following its effective date, but shall automatically renew for successive one-year periods. Either party may seek to negotiate a new agreement by providing written notice to the other party at least than sixty (60) days prior to the end of the initial term or any succeeding term.

#### **IV. POSITIONS OF THE PARTIES**

No party contended that the Agreement is discriminatory or contrary to the public interest. Staff reviewed the Agreement in the context of the criteria contained in Section 252(e)(2)(A) of the Act and determined that it met the necessary requirements. Under this Section, the Commission may reject an agreement, or any portion thereof, adopted by negotiation under Subsection (a) only if it finds that (i) the agreement, or a portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such an agreement, or a portion thereof, is not consistent with the public interest, convenience and necessity.

Mr. Omoniyi asserts in his Verified Statement that the Agreement meets the standards set forth in the Telecommunications Act of 1996 and is consistent with the public interest, convenience and necessity. There are no contested issues in this docket. Staff recommends that the Commission approve the Agreement for the reasons set forth in the Verified Statement of Mr. Omoniyi.

Staff recommends in order to implement the El Paso – 360networks (USA) inc. Agreement, the Commission should require El Paso, within five (5) days from the date the agreement is approved, to modify its tariffs to reference the negotiated agreement for each service. Such a requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. The following section of El Paso's tariffs should reference the El Paso – 360networks (USA) inc. Agreement: Agreements with Telecommunications Carriers (ICC No. 14, Section 14).

Staff also recommends in order to assure that the implementation of the Agreement is in public interest, EL PASO should implement the Agreement by filing a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the original verified petition. The Chief Clerk should place the Agreement on the Commission's web site under Interconnection Agreements.

#### **V. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) The El Paso Telephone Company d/b/a FairPoint Communications / The El Paso Telephone Company and 360networks (USA) inc. are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act;
- (2) The El Paso Telephone Company d/b/a FairPoint Communications / The El Paso Telephone Company and 360networks (USA) inc. has entered into a Negotiated Interconnection Agreement which has been submitted to

the Commission for approval under Section 252(e) of the Telecommunications Act of 1996;

- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the Negotiated Interconnection Agreement between The El Paso Telephone Company d/b/a FairPoint Communications / The El Paso Telephone Company and 360networks (USA) inc. does not discriminate against a telecommunications carrier not a party to the Agreement;
- (6) in order to implement the El Paso – 360networks (USA) inc. Agreement, the Commission must require El Paso, within five (5) days from the date the agreement is approved, to modify its tariffs to reference the negotiated agreement for each service. Such a requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties access to the Agreement. The following section of EL PASO's tariffs must reference the El Paso – 360networks (USA) inc. Agreement: Agreements with Telecommunications Carriers (ICC No. 14, Section 14).
- (7) in order to assure that the implementation of the Agreement is in public interest, El Paso must implement the Agreement by filing a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, that the approved Agreement is the same as the Agreement filed in this docket with the original verified petition. The Chief Clerk must place the Agreement on the Commission's web site under Interconnection Agreements;
- (8) the Negotiated Interconnection Agreement must be approved as hereinafter set forth;
- (9) approval of the Negotiated Interconnection Agreement does not have any precedential effect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Negotiated Interconnection Agreement between The El Paso Telephone Company d/b/a FairPoint Communications / The El Paso Telephone Company and 360networks (USA) inc. is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that The El Paso Telephone Company d/b/a FairPoint Communications / The El Paso Telephone Company and 360networks (USA) inc. must comply with findings (6), and (7) of this Order within five days of the date of this Order.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 9th day of February, 2011.

(SIGNED) MANUEL FLORES

Acting Chairman